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SUPREME COURT, U. S.

No. 987.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

AL FRIEDMAN,
Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS et al.,
Respondents.

PETITIONER'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI.

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I.

The Decision of the Court of Appeals Is National in Scope and Presents an Important Question of General Application.

Respondents, in urging that certiorari be denied, refer to a West Virginia decision "involving similar issues" in which this Court denied certiorari,[1] as constituting a type

[1] *Simpson v. Grand International Brotherhood*, 83 W. Va. 335, 98 S. E. 506, cert. den. 250 U. S. 644 (1919).

of action "not reviewed by this Court" (Respondents' brief, p. 8). Respondents say, p. 9, that such review "would open the door wide" to this Court for a "multitude of state court decisions involving union disciplinary proceedings." However, no such calamity is in progress here, the basis for the requested review being quite different than respondents construe it.

Moreover, respondents do not question petitioner's assertion, p. 12, that: "The precedent established by the Court of Appeals * * * affects all of America's 15,000,000 union members." Respondents' brief, p. 8, adds support to this assertion by pointing out that the instant case "is a type of action heard regularly by state courts throughout the country." Indeed it is; and it is precisely because the Court of Appeals for the District of Columbia has for the first time entered this important field of union disciplinary procedure, that a reviewable question is presented. It is the federal precedent established, national in scope, that is important.[2] A review of that precedent would not necessarily open the door to review of state court decisions. But even if it did, that fact would constitute no reason for denial of certiorari here.

Clearly, the state courts in the "multitude" of decisions referred to in respondents' brief involving union disciplinary proceedings, will be influenced by the instant decision—more than likely they would feel themselves constrained to follow it. *Hence, we submit, that if the federal precedent for union disciplinary proceedings is to be the narrow one adopted by the Court of Appeals here, which is contrary to the almost unanimous trend of*

[2] The petition (p. 13) cites *Del-Vecchio v. Bowers*, 296 U. S. 280, 285, 56 S. Ct. 190, 193 (1935), and *Unemployment Compensation v. Aragon*, 329 U. S. 143, 67 S. Ct. 245 (1946), in support of that position. Respondents' brief makes no reference either to the contention itself, or the cases cited in support thereof.

modern decisions, such an important stand should be adopted only after full consideration by this Court.[3]

II.

Contrary to Respondents' Contention, the Petition Points Out Legal Errors by the Court of Appeals, Such as Permitting Those Who Did Not Hear the Witnesses to Accept Their Testimony as True Even Though the Trial Committee Disbelieved It.

Respondents' brief states that "strangely enough" petitioner does not contend that the Court of Appeals incorrectly applied existing legal principles, or that the findings of the Court of Appeals were "contrary to established legal principles" (pp. 12, 14). However, the petition, pp. 13-21, discusses at some length legal principles which petitioner contends were ignored or incorrectly applied by the Court of Appeals. In addition, at pp. 12-13 are listed six separate violations of petitioner's rights which were overlooked or condoned by the Court of Appeals.

[3] See pp. 13-18 of the petition for the more recent authorities. Moreover, since this petition was filed, the Court of Appeals of New York has adopted the modern view, holding that there must be "public policy touching the government of labor unions" and that such policy should be "traditionally democratic." *Madden v. Atkins*, May 1, 1958, 42 LRRM 2161, 2164, not reported elsewhere. Respondents' brief makes no reference to the recent authorities which, without exception, reject the narrow view of the Court of Appeals here. Likewise, the Court of Appeals made no reference to these authorities. Respondents' only reference to the point—if indeed it is such a reference at all—is *Sanders v. International Association of Bridgeworkers*, 235 F. 2d 271 (C. A. 6, 1956), holding that public policy permits a union to expel a member properly found guilty of an expellable offense. In that case the member was admittedly guilty, but in spite of that the District Court felt that expulsion was too great a penalty under any circumstances, since expulsion deprived the member of his right to work. The Sixth Circuit reversed, and held that the expulsion was proper under the circumstances there presented. The case is not in point. Petitioner has never contended that expulsion was impossible from Respondent Union; but only that such expulsion must be in accord with ordinary principles of justice.

As pointed out in the petition, Footnote 5, p. 15, the cases cited by the Court of Appeals are comparatively old and contrary to the almost universal trend of the modern decisions. Respondents' brief does not directly challenge this contention. The only decision even mentioned by respondents in this connection is *Gonzales v. Ass'n of Machinists*, 142 Cal. App. (2) 207, 298 P. (2) 92 (1956), reviewed by this Court May 26, 1958. The discussion of that case, however, does not really dispute that *Gonzales* is contrary to the Court of Appeals in the instant case; in fact, seems to concede the conflict. It should be noted, moreover, that petitioner does not contend, as respondents say he does, that conflict between the California state court in *Gonzales* and the Court of Appeals here, would in and of itself constitute a ground for granting certiorari as a means of securing uniformity among the various courts of appeal. *Gonzales* was cited as a particularly pertinent recent decision in support of the modern trend—since the same union constitution was involved—and to emphasize the national significance of the Court of Appeals' decision here to the contrary.[4]

As to leaving credibility to the triers of the facts (pp. 18-21 of the petition) respondents state that the rule applies only to judicial decisions and not to administrative proceedings (footnote 5, p. 10, respondents' brief). Respondents, however, cite no authority for that position, which would permit an administrative tribunal to accept as true testimony which it did not hear, and then base findings thereon, after the triers of the fact had rejected

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[4] Respondents also cite *Weinstock v. Ladsky*, 93 N. Y. S. 2d 85, a decision of a New York trial court, holding that trade unions have the right to protect themselves from Communist infiltration. The case has no application to any issue here. Petitioner has never suggested that unions do not have the right to discipline members for Communist activity, or for any activity that would legitimately require discipline. Petitioner has and does insist, however, that he is entitled to a fair trial in such proceedings.

the testimony. Well established principles of ascertaining truth and protecting the rights of an accused are, of course, the same, regardless of the nature of the tribunal.

III.

There Is a Conflict in Principle Between the Court of Appeals' Decision Here Where It Applied the Old View of Non-Interference in Union Internal Affairs and in the Teamsters Case Where It Permitted the District Court to Inject Itself Completely Into the Union's Internal Affairs.

Petitioner does not contend that the facts in *Teamsters v. Cunningham*, 41 LRRM 204, C. A. D. C., Nov. 4, 1957, have any similarity to those in the instant case, as respondents seem to say we do, pp. 10-11 of their brief. We did say that in the *Teamsters* case, the Court of Appeals permitted the District Court to inject itself into the internal affairs of a trade union to an extent unheard of during the time when unions were considered little more than fraternal societies and the courts adopted a hands-off policy. In the instant case, however, the Court of Appeals clung to the old hands-off position, as previously pointed out. We submit that these two positions are in conflict.

Conclusion.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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